

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____	X	
STEVE SANDS,	:	
	:	18 Civ. No. 8228 (VM)
Plaintiff,	:	
	:	ANSWER
-against-	:	
	:	
OUTER PLACES LLC,	:	
	:	
Defendant.	:	
_____	X	

Defendant Outer Places LLC (“Outer Places” or “Defendant”), by its undersigned attorneys, allege the following as its Answer to the Complaint of plaintiff Steve Sands (“Sands” or “Plaintiff”).

NATURE OF THE ACTION

1. Denies each and every allegation set forth in paragraph 1 of the Complaint, except denies knowledge or information sufficient to form a belief as to whether Plaintiff copyrighted the subject photograph, and admits that Plaintiff purports to assert an action for copyright infringement and seeks monetary relief under the Copyright Act.

JURISDICTION AND VENUE

2. Admits the allegations set forth in paragraph 2 of the Complaint.
3. Admits the allegations set forth in paragraph 3 of the Complaint.
4. Admits the allegations set forth in paragraph 4 of the Complaint.

PARTIES

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of Complaint.
6. Admits the allegations set forth in paragraph 6 of the Complaint.

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the Complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8 of the Complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9 of the Complaint.

B. Defendant's Infringing Activities

10. Denies each and every allegation set forth in paragraph 10 of the Complaint, except admits that, on or about September 11, 2015, Outer Places ran an article on its website entitled "Marvel Television Bringing Agents of S.H.I.E.L.D., Jessica Jones and Daredevil to New York Comic Con" that featured a photograph similar if not identical to the photograph shown on Exhibit A to the Complaint.

11. Denies each and every allegation set forth in paragraph 11 of the Complaint.

12. Denies each and every allegation set forth in paragraph 12 of the Complaint except admits that in 2016 Plaintiff sued Outer Places for copyright infringement.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
17 U.S.C. §§ 106,501

13. Outer Places repeats and realleges the allegations in paragraphs 1 through 12 of this Answer as if fully set forth herein.

14. Denies each and every allegation set forth in paragraph 14 of the Complaint.

15. Denies each and every allegation set forth in paragraph 15 of the Complaint.

16. Denies each and every allegation set forth in paragraph 16 of the Complaint.

17. Denies each and every allegation set forth in paragraph 17 of the Complaint.

SECOND CLAIM FOR RELIEF
(INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST
DEFENDANT)
17 U.S.C. § 1202

18. Outer Places repeats and realleges the allegations in paragraphs 1 through 17 of this Answer as if fully set forth herein.

19. Denies each and every allegation set forth in paragraph 19 of the Complaint.

20. Denies each and every allegation set forth in paragraph 20 of the Complaint.

21. Denies each and every allegation set forth in paragraph 21 of the Complaint.

22. Denies each and every allegation set forth in paragraph 22 of the Complaint.

23. Denies each and every allegation set forth in paragraph 23 of the Complaint.

24. Denies each and every allegation set forth in paragraph 24 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

25. Plaintiff is not entitled to an award of attorneys' fees or statutory damages because the alleged infringement occurred nine months prior to the effective date of the Certificate of Registration attached to the Complaint as Exhibit B.

SECOND AFFIRMATIVE DEFENSE

26. The Complaint fails to state a claim upon which relief may be granted.

THIRD AFFIRMATIVE DEFENSE

27. Plaintiff's claims are barred, in whole or in part, by the doctrines of estoppel, waiver, laches and/or acquiescence.

FOURTH AFFIRMATIVE DEFENSE

28. Plaintiff's purported copyright and/or copyright registration is invalid, void and/or unenforceable.

FIFTH AFFIRMATIVE DEFENSE

29. Plaintiff's claims are barred by the doctrine of fair use.

SIXTH AFFIRMATIVE DEFENSE

30. Plaintiff authorized, implicitly or explicitly, any use by Outer Places of the subject photograph, and therefore Plaintiff's claims are barred by the doctrine of implied license.

SEVENTH AFFIRMATIVE DEFENSE

31. Plaintiff's claims are barred to the extent that Plaintiff has forfeited or abandoned his subject purported intellectual property.

EIGHTH AFFIRMATIVE DEFENSE

32. Plaintiff's claims are barred by the doctrine of misuse of copyright.

NINTH AFFIRMATIVE DEFENSE

33. Plaintiff's claims are barred, in whole or in part, because Outer Places' conduct was, at all times, in good faith and with non-willful intent.

TENTH AFFIRMATIVE DEFENSE

34. Plaintiff's claims are barred because the statutory damages sought are unconstitutionally excessive and disproportionate to any actual damages that may have been sustained in violation of the Due Process Clause.

ELEVENTH AFFIRMATIVE DEFENSE

35. Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to mitigate his damages, if any.

TWELFTH AFFIRMATIVE DEFENSE

36. Plaintiff's claims are barred, in whole or in part, because any damages allegedly suffered by Plaintiff were caused by persons other than Outer Places or outside Outer Places' control.

WHEREFORE, Outer Places respectfully requests that the Court enter judgment as follows:

- a. Dismissing Plaintiff's claims with prejudice;
- b. Awarding Outer Places its attorneys' fees, expenses and costs incurred in this action; and
- c. Awarding Outer Places such other and further relief as the Court deems just and proper.

Dated: New York, New York
November 2, 2018

Respectfully Submitted,

SULLIVAN & WORCESTER LLP

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